Grocery and Food Products, Processors, Canneries, Frozen Food Plants, Sugar Processors, Confectionery and Candy Manufacturers and Distributors, Coffee Vending, Miscellaneous Drivers and Salesmen, Warehousemen and Related Office Employees Union, Local 738, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (E. J. Brach Corporation and West Personnel, Joint Employers) *and* Ivory Pearson. Case 13–CB–14124

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The issue raised here is whether Administrative Law Judge Arline Pacht correctly dismissed the allegation that the Respondent violated Section 8(b)(1)(A) of the Act by failing to advise Charging Party Ivory Pearson and other newly hired unit employees subject to a union-security clause of the rights accorded them by *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings, findings, and conclusions, only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified and set forth in full below.

In addressing the Section 8(b)(1)(A) *Beck* notice allegation, the judge held that ''[a]s the party asserting the Union has failed to comply with *Beck*, the General Counsel bears the burden of coming forward with proof of a diversion of nonmember dues to non-representational activities.'' Because the judge found no evidence that the Respondent allocated dues for any nonrepresentational purposes, she recommended dismissing the allegation.

Subsequent to the judge's decision, the Board addressed numerous issues involving *Beck*-related rights in *California Saw & Knife Works*, 320 NLRB 224 (1995).[3] In *California Saw*, the Board held that the union violated its duty of fair representation by failing to notify bargaining unit employees who were not union members that they had the right under *Beck* to limit payment of their union-security dues and initiation fees to moneys spent on activities germane to their union's role as a Section 9(a) bargaining representative. Specifically, the Board found

> [T]hat when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures. [Footnote omitted.][4]

Contrary to the judge's analysis, the *Beck* notice obligation defined in *California Saw* is not contingent upon a showing that some nonmember dues are being used for nonrepresentational purposes. The initial notice and the notice to objectors convey fundamental information, statutorily required to ensure an employee's understanding of the nonmember objector option available under a union-security clause and the means by which to pursue the objection. An employee might wish to pursue the nonmember option even if, at the time that notice is given, the union is not spending dues on nonrepresentational activities, since the employee might wish to assure that he will be in a position to object if the union's policy changes in the future. The matter of exactly what proportion of dues and fees a union is spending on nonrepresentational activities is, in any event, not part of the required infor-

[1] On July 26, 1995, the judge issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief.

[2] There are no exceptions to the judge's findings that the Respondent unlawfully required newly hired employees to execute dues-checkoff forms, that Joint Employers Brach Corporation and West Personnel Service acted as the Respondent's agents in obtaining employees' signatures on dues-checkoff forms, and that a notice from the Respondent to employees that the contractual union-security clause had been amended did not effectively repudiate its prior unlawful failure to inform employees that under *NLRB v. General Motors*, 373 U.S. 734 (1963), their sole obligation under the clause was to pay uniform dues and fees and that formal union membership was not required.

Chairman Gould notes that the complaint does not allege that the unamended clause was facially invalid because of its requirement that unit employees become and/or maintain ''their membership in the Union in good standing . . . .'' But as stated in his partial dissent in *Teamsters Local 443 (Connecticut Limousine)*, 324 NLRB 633, 638 fn. 1 (1997), and his concurring opinion in *Monson Trucking*, 324 NLRB 936 (1997), he agrees with the Sixth Circuit, except to the extent that its reasoning relies upon *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), that clauses continuing such language are facially invalid. See *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997). Since the issue is not raised in this case, Members Fox and Higgins do not pass on the issue raised and resolved by Chairman Gould.

[3] See also *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), enf. denied in part *Buzenius v. NLRB*, supra, for related discussion of a union's *Beck* notice obligation to members.

[4] 320 NLRB at 233.

mation in an initial *Beck* notice, which is all that is at issue here. If an employee elects nonmember status, however, and decides to object to the payment of dues and fees for other than representational purposes, he may challenge the union's calculations even if the union maintains that all of its dues and fees income is spent on representational activities. See *Carpenters Local 943 (Oklahoma Fixture Co.)*, 322 NLRB 825 (1977). In sum, at any given point in time, the policy of the union regarding use of dues and fees for other than representational purposes is irrelevant to the usefulness of the initial *Beck* and *General Motors* notice to an employee making an initial election between member or nonmember status and, if the employee elects nonmember status, between objector or full-dues paying status.

Consequently, the General Counsel need not prove a diversion of nonmember dues to nonrepresentational activities in order to prove a union's unlawful failure to provide initial notice of *Beck* rights to nonmember unit employees. In this case, it is undisputed that the Respondent failed to give sufficient notice, as defined in *California Saw*, before seeking to obligate nonmember unit employees to pay fees and dues under a union-security clause. We therefore find that the Respondent violated Section 8(b)(1)(A) of the Act.

AMENDED REMEDY

Having found that the Respondent violated Section 8(b)(1)(A), we shall order it to cease and desist and take certain affirmative action that will effectuate the policies of the Act. Specifically, we shall order the Respondent to notify all unit employees of their right to be and remain nonmembers,[5] and of the rights of nonmembers under *Beck*. Further, and in accordance with *Rochester Mfg. Co.*, 323 NLRB 260 (1997), we shall order the Respondent to process, nunc pro tunc, the objections of any employees who, with reasonable promptness after receiving their notices, elect nonmember status and make *Beck* objections with respect to one or more of the accounting periods covered by the complaint; and to reimburse, with interest, those who object for any dues and fees exacted from them for nonrepresentational activities. Interest on the amount of proportionate back dues and fees owed to objectors shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Grocery and Food Products, Processors, Canneries, Frozen Food Plants, Sugar Processors, Confectionery and Candy Manufacturers and Distributors, Coffee Vending, Miscellaneous Drivers and Salesmen, Warehousemen and Related Office Employees Union, Local 738, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Chicago, Illinois, its officers, agents, and representatives, shall.

1. Cease and desist from

(a) Receiving fees and dues deducted from the wages of employees of E. J. Brach Corporation and/or West Personnel Service, where such deductions were made pursuant to dues-checkoff authorizations not freely and voluntarily given.

(b) Failing to notify unit employees, when it first seeks to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Refund to any employee who was employed by Brach after January 7, 1993, any dues which may have been deducted from their wages during the first 30 days of their employment, with interest as prescribed in the remedy section of this decision.

(b) Notify all unit employees in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(c) Process the objections of nonmember bargaining unit employees in the manner prescribed in the amended remedy section of this decision.

(d) Reimburse, with interest, nonmember bargaining unit employees who file objections under *Communica-*

[5] Although the complaint does not specifically allege a failure to notify employees of their rights under *NLRB v. General Motors*, 383 U.S. 734 (1965), the Board has stated that, because of the ''close connection'' between the two sets of rights, ''in order to fully inform nonmember employees of their *Beck* rights, a union must . . . tell them of their *General Motors* right to be and remain nonmembers.'' *California Saw & Knife Works*, supra, 320 NLRB at 235 fn. 57. Accordingly, we invoke the Board's remedial authority to require notice to unit employees of their right to be and remain nonmembers. See *Laborers Local 265*, 322 NLRB 294, 297 (1996); *Stage Employees, IATSE (Hughes-Avicom)*, 322 NLRB 1064, 1065 (1997).

[6] The Respondent shall also refund all dues unlawfully deducted from employee paychecks during their first 30 days of employment, with interest computed in accordance with *New Horizons for the Retarded*. See fn. 17 of the judge's decision.

tions Workers v. Beck, supra, with the Union for any dues and fees exacted from them for nonrepresentational activities for each accounting period since January 7, 1993, as prescribed in the amended remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of reimbursement to be paid union nonmember bargaining unit employees who file objections under *Communications Workers v. Beck*, supra, with the Union.

(f) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Union's authorized representatives, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Furnish signed copies of the notice to the Regional Director for posting by E.J. Brach Corp. and West Personnel Service, if willing, at all places where notices to employees are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT accept remittance of union initiation fees and dues deducted from the wages of unit employees pursuant to any dues-checkoff authorization not freely and voluntarily given by the employees.

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their rights to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL refund to any Brach employees in the bargaining unit hired since January 7, 1993, dues and initiation fees which may have been deducted from their wages during the first thirty days of their employment, plus interest.

WE WILL notify all unit employees in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL process the objections of nonmember bargaining unit employees and reimburse, with interest, nonmember bargaining unit employees who file objections for any dues and fees exacted from them for nonrepresentational activities for each accounting period since January 7, 1993.

GROCERY AND FOOD PRODUCTS, PROCESSORS, CANNERIES, FROZEN FOOD PLANTS, SUGAR PROCESSORS, CONFECTIONERY AND CANDY MANUFACTURERS AND DISTRIBUTORS, COFFEE VENDING, MISCELLANEOUS DRIVERS AND SALESMEN, WAREHOUSEMEN AND RELATED OFFICE EMPLOYEES UNION, LOCAL 738, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO

Emilie Schrage, Esq., for the General Counsel.
Susan Brannigan and *Marvin Gittler, Esqs.*, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. Upon a charge filed by Ivory Pearson on July 7, 1993, a complaint issued on August 19, 1993, which was amended on May 5, 1994, alleging that Respondent, Grocery and Food Products, Processors, Canneries, Frozen Food Plants, Sugar Processors, Confectionery and Candy Manufacturers and Distributors, Coffee Vending, Miscellaneous Drivers and Salesmen, Warehousemen and Related Office Employees Union, Local 738, International Brotherhood of Teamsters, AFL–CIO,[1] violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by failing to provide information to newly hired employees regarding their financial responsibilities under the union-security clause in its contract with the E. J. Brach Corporation. The Respondent filed a timely answer denying the substantive allegations.

This case came to trial on May 5, 1994, at which time the parties examined witnesses, presented documentary evidence, and had the opportunity to argue orally. Upon the evidence presented in this proceeding, and my observation of the witnesses' demeanor, and after consideration of the parties' posttrial briefs, I make the following

I. FINDINGS OF FACT

A. *Jurisdiction*

E. J. Brach Corporation,[2] an Illinois corporation, with an office and place of business in Chicago, Illinois, at all material times has engaged in the production and packaging of candy products. In conducting its business, the Employer sold and shipped from its Chicago, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois. It is undisputed that at all material times Brach has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

B. *Alleged Unfair Labor Practices*

Brach and the Union, the exclusive bargaining agent for a unit of production and maintenance employees, entered into a labor contract effective from July 15, 1990, to July 16, 1994, which contained a union-security clause requiring employees to become members of the Local and maintain membership in good standing.[3] The agreement also contained dues-checkoff and indemnification provisions. The dues-checkoff section required Brach to deduct dues and fees from the wages of each employee from whom the Company had received a voluntary authorization form furnished by the Union and approved by the Company.[4]

Over the years, West Personnel Service,[5] a temporary employment agency, referred temporary employees to Brach to supplement its regular workforce. Together with West, Brach controls and jointly administers a common labor policy for these temporary employees.[6]

Cheryl Shea, West's senior customer service representative, managed West's on-site project at Brach's Chicago facility. Her duties included recruiting temporary help, assigning jobs and managing West's office at the Brach facility. Shea and other West personnel visited State of Illinois Unemployment Offices several times a week from May through August 1993,[7] in order to interview and hire applicants for temporary positions at Brach. Potential applicants were informed of open positions at Brach's and, if they were interested in the job, completed paperwork, including a job application and certain tax forms. Shea also informed applicants that they must become members of the Union within 30 days of employment, and that they would have to pay union dues and initiation fees which would be deducted from their paychecks. After a tentative decision to hire the applicant was made, the applicant was required to take a drug test and a physical examination. If the applicant passed the drug test, he would attend an orientation session conducted by West.

West representatives typically left copies of a one-page information sheet at state unemployment offices for potential

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[1] Herein called the Union.

[2] Herein called Brach.

[3] The operative sections of the union-security provision, set forth in art. 3, require that:

> All employees in the bargaining unit who are members of the Union on the effective date of this Agreement shall, as a condition of employment, maintain their membership in the Union in good standing during the term of this Agreement.
>
> All employees in the bargaining unit who are not members of the Union on the effective date of this Agreement shall join the Union upon completion of thirty (30) full calendar days after the effective date of this Agreement, and as a condition of employment shall maintain their membership in the Union in good standing during the term of this Agreement.
>
> All new employees who are hired after the effective date of this Agreement and who are within the bargaining unit shall join the Union upon completion of thirty (30) full calendar days following the date of employment and shall main-tain their membership in the Union in good standing during the term of this Agreement.

[4] Art. 4 of the agreement provides in pertinent part:

> Section 4.01: Check Off: The Company agrees for the term of this Agreement to deduct from an employee's earnings, an employee initiation fee, membership dues and regular assessments required of each employee for whom the Company has received an individual and voluntary authorization for such deductions in a form furnished by the Union and approved by the Company. The Union dues deduction shall commence thirty (30) calendar days after the employee's date of hire. In the event that any employee is in arrears in dues at the time he/she leaves employment, such amount as is due to the Union shall be deducted from any final wages paid to such employee, provided, however, that the Union has notified the Employer of such arrearages in writing prior to the payment of the employee of such final wages.
>
> Section 4.02: Indemnification: The Union, its successors, and assigns shall indemnify and save the Company harmless against any and all claims . . . damages, or other forms of liability arising out of any amounts of money remitted to the Union by reason of action taken in reliance on individually, authorized deduction forms furnished to the Company by the Union.

[5] Herein called West.

[6] The Union admits and I find that Brach and West are joint employers in regard to the temporary employees.

[7] Unless otherwise stated, all dates refer to events which occurred in 1993.

applicants to read at their leisure. These handouts, prepared and distributed on West's letterhead, announced that it ''is currently recruiting for general maintenance/production workers for the E.J. Brach Corporation in Chicago.'' After briefly describing the basic terms and conditions of employment at Brach, the flyer states:

> All temporary employees will be required to pay an initiation fee of $150.00 to Teamsters Local 738 which will automatically be deducted from your paycheck in increments of $25.00 per week for 6 consecutive weeks. The deduction would begin on the 5th week of assignment at E.J. Brach.
>
> In addition to the initiation fee, there will be a $12.00 monthly payroll deduction for monthly dues.
>
> Temporary employees will not be eligible for union benefits.

West conducted orientation sessions for newly hired employees twice weekly, from the beginning of May through August. Charging Party Ivory Pearson (Pearson) was interviewed by Shea at the unemployment office at the end of May and attended an orientation session at Brach's facility on June 1.[8] On this occasion, Shea described the job and distributed packets assembled by Brach which included the Company's policy handbook and union forms entitled ''Application for Membership and Voluntary Check-Off Authorization.''[9] She told the new recruits that because Brach was a union shop, they were required to join the Union. Pearson testified without dispute that the employees were told to complete the dues-checkoff authorization forms as they were needed to authorize deductions.[10] At the end of the session, Shea collected the executed forms.[11]

When each employee began working, West sent the appropriate executed authorization form to Brach. There is no testimony that Brach ever submitted the forms to the Union. However, soon after an employee started to work, West began deducting fees from the wages of temporary employees working at Brach, in accordance with the dues-checkoff authorizations, and thereafter, remitted the funds to the Union.

Pearson worked for the Brach Corporation from approximately June 14 to September 1. He was not a union member at the time West recruited him, but had belonged to a sister Local during a previous period of employment. He turned in his earlier membership card at the orientation session and subsequently, received a transfer card by mail. Thereafter, he noted a wage deduction for initiation fees. Other than these transactions, Pearson was neither contacted by, nor did he contact the Union throughout his employment at Brach. At no time did he complain to the Union about paying dues or the amount of dues to be paid.

[8] Shea was present at all orientation sessions.

[9] Brach provided West with the forms, which were printed under the Union's name and logo.

[10] Pearson testified that new employees were told that they had to fill out the authorization forms. Pearson filled out the form and turned it in before leaving the session.

[11] Shea testified that not all of the employees executed the forms and could not recall if any were collected at a later date. Pearson testified that 30–35 new employees were present at the session and that 34 forms were collected. Therefore, I find that most, if not all, of the forms were executed and collected.

After charges were filed against Brach and West alleging that they unlawfully interfered with and assisted the Union, both employers signed and posted two notices, one dated August 2 and the second, August 30, acknowledging that they may have acted unlawfully by virtue of the manner in which they collected union dues and fees. The two notices are virtually identical, except that the latter one contains an additional paragraph which states that all union dues deducted during the employees' first 30 days of employment would be refunded.

In mid to late September 1993, approximately a month after the complaint issued in this case, a ''Notice To All Employees,'' written on Respondent's letterhead, and signed by ''The Executive Board, Teamsters Local Union No. 732'' was posted on the union bulletin board at the Brach facility, stating:

> The Union security clause between the Company and the Union, Article 3, has been amended by adding a new paragraph as follows:
>
> The term ''member'' or ''members in good standing'' shall be limited to the payment of the initiation fees and membership fees uniformly required as a condition of acquiring or retaining membership and shall be a financial obligation only. Nothing in this agreement shall require the actual joining or formal membership in the Union.

Having left Brach's employ on September 1, Pearson never saw the above-quoted notice, and received no mailing that explained to new hires or nonmembers; (1) that the Union spent money in the last year on nonrepresentational activities; (2) that nonmembers could object to the Union spending money on nonrepresentational activities; or (3) that objecting nonmembers would be charged only for representational activities and would be provided with a detailed breakdown of representational and nonrepresentational activities.

II. DISCUSSION AND CONCLUDING FINDINGS

A. *The Issues*

The issues to be resolved in this case are:

1. Whether Brach and West unlawfully coerced newly hired employees to execute dues-checkoff forms.

2. Whether Brach and West acted as the Union's agents in obtaining employees' signatures on dues-checkoff forms.

3. Whether the Union's notice to employees regarding their core financial obligations remedied its unlawful solicitation of dues-checkoff forms under *Passavant*.

4. Whether the Union violated the Act by failing to notify temporary employees working at Brach of rights accorded by the *Beck* decision.

B. *Brach and West Unlawfully Required Newly Hired Employees to Execute Dues-Checkoff Forms*

Under Section 7 of the Act, employees may decline to to sign a dues-checkoff authorization as a method of fulfilling their membership obligations pursuant to a lawful union-security agreement. *Electrical Workers Local UE 601 (Westinghouse Electric Corp.)*, 180 NLRB 1962 (1970). An employer may not lawfully interfere with that right by requiring

that employees execute such authorizations. *IBEC Housing Corp*., 245 NLRB 1282, 1283 (1979).

However, an employer does not violate the Act merely by advising new employees that they must join the union. *Keller Plastics Eastern, Inc*., 157 NLRB 583, 587 (1966). Absent specific threats or other intimidating acts, an employer may even distribute membership authorization cards to new employees during the hiring process. See *Colin Service Systems*, 226 NLRB 70, 71 (1976). In *Colin*, a supervisor distributed membership applications and dues-checkoff cards to employees, instructing them they were required to join the union after 30 days of employment. Finding no evidence that the employees were threatened or that their employment was conditioned on signing the cards, the Board concluded that the employer had acted lawfully. Accord: *General Instrument Corp*., 262 NLRB 1178, 1184–1185 (1976).

The Board reaches a contrary result where an employer leads new hires to believe that signing the dues-checkoff form is compulsory. For example, in *Grason Electric Co*., 296 NLRB 872, 883 (1989), a foreman distributed membership and dues authorization cards to employees during a company meeting, warning that they would be terminated if they did not sign the forms and return them the same day. The administrative law judge ruled with Board concurrence, that

> . . . such solicitation went beyond merely advising employees of the union-security obligations of the contract and tended to restrain and coerce employees into executing . . . checkoff authorizations.

Id. at 887. Similarly in *Mode O'Day Co*., 280 NLRB 253 (1986), an employee received a number of forms which were completely filled in but for her signature, including one for automatic dues checkoff. A supervisor encouraged her to sign them, stating that dues would not be deducted until after the first 30 working days. The Board affirmed the administrative law judge's decision that grouping the dues-checkoff form with other materials which were completely filled out before being furnished to the employee at this stage of the hiring process could lead her to believe that her signature on the checkoff form was a condition of employment. Accordingly, the Board concurred with the administrative law judge that the dues-checkoff form was involuntarily executed. Id. at 255. Accord: *Campbell Soup Co*., 152 NLRB 1645, 1647 (1965).

The facts in the instant case bring it within the reach of *Grason Electric* and *Mode O'Day*. As in those cases, West's representative handed out dues-checkoff forms, specifically directed the new employees to sign them, and collected them at the end of the meeting. On these facts, it is fair to infer that the newly hired workers felt obliged to sign the forms as a condition of employment. Although the forms given to the employees were not entirely filled out and predated as they were in *Mode O'Day*, they were distributed and collected during the same orientation session with instructions that they be completed. Consequently, a reasonable employee could have concluded that he was required to execute the forms at that time. West collected forms from virtually everyone present at the session, suggesting that the employees were under some degree of coercion.

In sum, by distributing dues-checkoff cards together with other documents, such as Brach's policy handbook; by collecting these forms at the same orientation session; and by informing new employees that they were required to fill out the forms just before they began working for Brach, I find that West and Brach coerced the employees in the exercise of the Section 7 rights.

C. *West and Brach Were Respondent's Agents for Purposes of Obtaining Signed Dues-Checkoff Forms*

Next, it is necessary to determine the extent to which the Union may be held liable for West's and Brach's conduct in securing the temporary employees' signatures on the dues-checkoff forms. The answer to this inquiry begins with Section 2(13) of the Act which provides that: ''In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.''

Expounding on the agency doctrine in *Service Employees Local 87 (West Bay Maintenance*), 291 NLRB 82 (1988), the Board explained that agency may be established in several ways, either by apparent authority and/or ratification. The Board concluded that apparent authority is created when the principal acts in a manner which leads a third person ''to believe that the principal has authorized the alleged agent to do the acts in question.'' Id. at 82–83. The Board also defined ratification as ''the affirmance by a person of a prior act that did not bind him, but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.'' Id. at 82–83.

In *Service Employees*, supra, the Board found the union liable for unlawful picketing, even in the absence of specific evidence that it initiated or authorized the objectionable conduct. In reaching this conclusion the Board relied on the fact that the union leadership had been notified that pickets were carrying ''Local 87'' signs for seven days and took no action to stop it. The Board reasoned that, under these circumstances, the union should have known that the pickets' conduct would give rise to the belief that they were authorized to act on the union's behalf and that by failing to act, the union ratified the pickets' conduct.

Applying this precedent to the instant case, it is fair to conclude that Brach and West were apparently authorized to act as the Local's agents for the purpose of collecting dues-checkoff forms. Pursuant to its collective-bargaining agreement with the Union, Brach was required to collect such fees for all employees who submitted voluntary dues-checkoff authorizations. Brach supplied West with dues forms bearing the Union's name and logo. West, in turn, then distributed to and collected the forms from the newly hired employees at the orientation session. Subsequently, West deducted the dues from the employees wages and forwarded the payments to the Union. Since Brach and/or West were apparent agents of the Union for purposes of distributing and collecting the dues-checkoff forms, Respondent also must bear responsibility for the acts of its agents which are closely related to and an apparent extension of the authority it did confer and upon which third parties rely. The Union should have known that allowing Brach and/or West to distribute forms bearing the Local's name would cause reasonable employees to be-

lieve that West was authorized to act on the Union's behalf for the purpose of obtaining their signatures on the dues-checkoff cards.

Here, unlike *Service Employees Local 87*, there is no direct evidence that the Union knew that West was soliciting the dues-checkoff forms, nor how it was carrying out that function. But the absence of such proof is far from fatal. In *Plasterers Local 90*, 236 NLRB 329, (1978), the Board ruled that where the evidence shows that the principal intended to confer authority, authority to act as an agent in a given manner will be implied. Thus, the Board found that where the union maintained an office in the home of its business agent, and his wife regularly answered the phone and added names to the referral list, there was sufficient evidence that the union was liable for the wife's conduct. In the present case, sufficient evidence also exists to establish by inference that the Union knew that West personnel were carrying out Brach's function in obtaining signed dues checkoff forms from their employees.

University Towers, 285 NLRB 199 (1987), is also on point. In that case, the Board ruled that where a union permits employees to distribute authorization cards to other employees, it thereby vests the solicitors with actual authority to obtain signed cards on the its behalf. Id. Moreover, unless the union indicates to third parties that employee statements made during the course of such solicitations are not to be regarded as union policy, the employee-solicitors are vested with apparent authority to make statements with respect to the cards. In this case, the union will be held responsible for such representations, lawful or not. Id. at 199–200.

Here, the Union knew or should have known that both Brach and West were involved in disseminating and collecting the dues-checkoff forms and thereafter, in automatically forwarding dues to the Union. It is difficult to imagine that the Union did not know of this arrangement, since this was not the first occasion that they received dues payments which West forwarded on behalf of temporary employees assigned to work at Brach's. Consequently, I conclude that Brach and West acted as the Union's agents within the meaning of Section 2(13) in obtaining the signed forms. Ergo, the Union was as liable for their lawful actions as it was for West's unlawful conduct in pressuring the employees to execute them. It follows that through the conduct of its agents, the Union unlawfully coerced employees in the exercise of their Section 7 rights by requiring that they sign the dues-checkoff authorization forms, thereby violating Section 8(b)(1)(A).

Respondent cites *Baby Watson Cheesecake*, 309 NLRB 417, 423 (1992), and *Philadelphia Sheraton Corp*., 136 NLRB 888 (1962), for the proposition that it cannot be held responsible for Brach's and West's conduct where evidence is lacking of union action and/or knowledge. Respondent's reliance on these cases is misplaced for it is abundantly clear that in the cited cases the unions were totally unaware of the employers' conduct, whereas here, Respondent knew or should have known by virtue of its contractual relationship with Brach and its receipt of dues payments and fees from West, that these firms were assuming responsibility for obtaining employee assent to an automatic dues-checkoff.

C. *The Union's Notice Did Not Meet the Passavant Standards*

In *NLRB v. General Motors Corp*., 373 U.S. 734 (1963), the Supreme Court ruled that an employee satisfies his membership obligations by paying only dues and fees under a union-security clause. As long as the employee fulfills his basic financial obligations, he may not be discharged for nonmembership. In other words, membership for 8(a)(3) purposes, ''is being whittled down to its financial core.''

Electrical Workers IUE Local 44 (Paramax Systems Corp.), 311 NLRB 1031 (1993), takes *General Motors* one step further. In *Paramax*, the Board found that although a union security provision requiring that members be ''in good standing'' was not facially invalid, it was ambiguous in that it failed to define ''member in good standing'' in accordance with *General Motors*, supra.[12] To cure this ambiguity, the Board ruled that the union's duty of fair representation required that the *Paramax* employees be notified that their core membership obligation was solely to pay dues and fees in order to retain their jobs.

As in *Paramax*, the union-security clause at issue here requires that new employees join the Union, and maintain their membership ''in good standing.'' At least initially, this clause, like the one in *Paramax*, failed to notify employees of their *General Motors* rights. However, as detailed in the fact statement above, the union posted a notice in mid to late September to comply with its *Paramax* duty of fair representation, advising employees that the union-security clause had been amended to include language which made it clear that an employee need do no more than pay dues and fees in order to be a ''member in good standing.'' The issue thus becomes whether this amendment is sufficient to cure the Union's earlier failure to notify employees of their core membership rights.

In *Passavant Memorial Area Hospital*, 237 NLRB 138–139 (1978), the Board rearticulated the strict standards which a party must follow to effectively purge itself of unlawful conduct. First, the wrongdoer must repudiate its unlawful actions in a timely, unambiguous manner, in terms specific in nature to the coercive conduct, and in an atmosphere free from other proscribed illegal conduct. Further, the Board insisted that the repudiation must be adequately published to the employees involved and that there be no proscribed conduct by the wrongdoer following the publication. Lastly, employees should be assured that the employer will not interfere with their exercise of Section 7 rights in the future.

On applying these standards to the situation in *Passavant*, the Board found the respondent's disavowal ineffective to obviate the need for further remedial action for the following reasons: (1) the attempted repudiation, issued 7 weeks after the statements were made and just as the complaint was about to issue, was untimely; (2) the announcement of repudiation was not sufficiently widespread, appearing only once in the employee newsletter, which may not have reached all

[12] In *NLRB v. News Syndicate Co*., 365 U.S. 695 (1961), the Supreme Court held that illegal objects will not be presumed, and contracts will not be found unlawful merely because they fail to disclaim all illegal objects. The phrase ''members in good standing'' does not explicitly require that employees bear obligations other than those lawfully imposed under Sec. 8(a)(3), therefore it is not facially invalid.

of the workers; (3) the disavowal language was not sufficiently clear or specific, omitting any reference to wrongdoing and simply informing employees that the statements made were not correct; and (4) did not assure employees that there would be no future wrongdoing. Id. at 1139.

The notice which Local 738 posted in this case advising the Brach/West employees of their core membership rights fails to comport with a number of the *Passavant* standards. The notice was hardly timely, in that it was posted more than 3 months after the Board's *Paramax* decision and approximately a month after the complaint in this case issued. It was less a repudiation than an announcement of future intent and did not acknowledge any prior error. Further, the atmosphere was tainted by other unlawful practices; namely, the Union's liability for the coercive practice used by West to obtain signed dues-checkoff forms. It is likely that the notice came to the attention of all Brach employees who were on the payroll sometime after mid-September. But it was too late to reach some of the West temporaries who were no longer in Brach's employ prior at the time of the posting, including the Charging Party. As in *Passavant*, the amendment did not acknowledge wrongdoing and failed to assure employees that similar conduct would not recur. For these reasons, I conclude that Respondent failed to repudiate its unlawful conduct in the manner prescribed by *Passavant* and, therefore, is liable for violating Section 8(b)(1)(A).

E. *General Counsel Failed to Show that the Union Expended Funds on Activities Unrelated to Representational Purposes*

A final question remains as to the impact of *Communications Workers of America v. Beck*.[13] on Respondent's obligations to Brach-West nonmember unit employees in this case. In *Beck*, the Supreme Court held that Section 8(a)(3) of the Act requires a union to advise nonmember unit employees that they are not obliged to pay dues for services other than collective bargaining, contract administration, and grievance adjustment. The *Beck* Court further held that the union may not expend prorated funds for activities beyond these three categories over the employee's objection.

The *Beck* rule had its genesis in *NLRB v. General Motors*, supra, where, as discussed above, the Supreme Court held that Section 8(a)(3) of the Act permits parties to enter into a collective-bargaining agreement with a union-security clause which requires that all unit employees must pay core membership fees; but that full membership could not be extracted as a condition of employment.[14]

The General Counsel contends that the Union violated Section 8(b)(1)(A) of the Act by failing to notify new employees of their *Beck* rights. In support of this contention, he submits that it would be anomalous to posit that unions must inform employees of some limits on their union-security obligations, but not of others also required by law. Further, counsel maintains that without such notification, employees would harbor the erroneous impression that payment of full dues and fees is required to retain their employment, when *Beck* mandates that unions can only legally compel objecting employees to pay for representational activities.

However, before a *Beck* notice is required, evidence should be adduced that the Union, in fact, allocates employees' dues to purposes other than those which *Beck* permits. After all, a *Beck* notice is unwarranted if *Beck* rights are not implicated. In the earliest stages of the *Beck* case, the parties themselves voluntarily provided the evidentiary base for a *Beck* notice by agreeing that the Local allocated some portion of its members' dues to activities other than strictly representational ones. Accordingly, as a factual predicate for its legal rulings, the district court for the District of Maryland found, inter alia, that ''it is undisputed that CWA has spent and continues to spend an as yet undetermined fraction of its dues receipts for purposes other than the three enumerated ones.'' 100 LRRM 3214, 3216 (1979).

As the party asserting that the Union has failed to comply with *Beck*, the General Counsel bears the burden of coming forward with proof of a diversion of nonmember dues to nonrepresentational activities. In a somewhat roundabout effort to meet this burden, the complaint alleges in substance, that the Union failed to inform newly hired employees, including the Charging Party, that ''(i) a stated percentage of funds was spent in the last accounting year for non-representational activities.''[15] The Respondent unequivocally denied this allegation in its Answer. Hence, the General Counsel was compelled to introduce proof to support this allegation. However, one may scour the record without finding a scintilla of evidence that the Respondent Local allocated dues for any adjunct purpose. Without such evidence, a notice that employee nonmembers need not pay dues for purposes other than collective bargaining, contract administration and grievance adjustment is unwarranted. Accordingly, I find that the Respondent did not violate the Act by failing to alert the West-Brach employees of their rights under *Beck*.

CONCLUSIONS OF LAW

1. E. J. Brach Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Grocery and Food Products, Processors, Canneries, Frozen Food Plants, Sugar Processors, Confectionery and Candy Manufacturers and Distributors, Coffee Vending, Miscellaneous Drivers and Salesmen, Warehousemen and Related Office Employees Union, Local 738, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, through its agents, Brach and West, violated Section 8(b)(1)(A) and by failing to adequately inform unit

[13] 487 U.S. 735 (1988).

[14] Close in time to the issuance of the *General Motors* decision, the Supreme Court took a different path under the Railway Labor Act (RLA). In *Machinists v. Street*, 367 U.S. 740 (1961), the Court held that Sec. 2, Eleventh of the RLA prevented unions from compelling nonmembers to pay dues for political purposes to which they objected. Two decades later the Supreme Court refined this principle, deciding that dues could be deducted solely for expenses necessarily and reasonably incurred in the union's performance of collective-bargaining duties. *Ellis v. Railway Clerks*, 466 U.S. 435 (1984).

In *Beck*, the Supreme Court extended *Street* and *Ellis* to the NLRA, pointing out that Sec. 8(a)(3) and Sec. 2 of the RLA were identical. The Court also noted that Congress' purpose was to authorize compulsory unionism only as needed to ensure that ''those who enjoy union negotiated benefits contribute to their costs.''

[15] G.C. Exh. I(c) at 3, par. VII,c.

employees that their sole obligation under the union-security clause of their collective-bargaining agreement was the payment of uniform dues and initiation fees, and thereafter receiving dues and fees pursuant to coercively obtained dues-checkoff authorizations.

4. The Union did not violate the Act by failing to advise employees that a percentage of their dues was applied to nonrepresentational activities; that they could object to having their dues spent on such activities and that those who objected would be charged only for such representational purposes.

5. The unfair labor practice cited above in paragraph 3 affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in the unfair labor practice described above, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, the Respondent shall be required to notify all West-Brach unit employee hired since January 7, 1993,[16] of their *General Motors* rights to pay the Union only initiation fees and dues. The General Counsel seeks as part of the remedy, the return of initiation fees and dues to all employees who became a part of the Brach unit after January 7, 1993, on the grounds that none of the dues-checkoff forms was executed without coercion or with the appropriate caveats required by *General Motors*, *Paramax*, and *Beck*. As discussed above, no showing was made in this case that the employees' dues payments were used for nonrepresentational purposes. I do not agree that the Union is obliged to refund the dues and initiation fees of unit members, since under lawful union-security and dues-checkoff clauses, the employees were legally obliged to make such payments.[17] During the course of their employment, the West employees had the benefit of the Union's services; therefore, they would be duly enriched by the return of their initiation fees and dues.[18]

[Recommended Order omitted from publication.]

[16] This date, precisely 6 months prior to the date on which the charge was filed, accords with the statutory period of limitations prescribed by Sec. 10(b) of the Act.

[17] The record suggests that West may have forwarded dues payments to the Union for some employees during their first 30 days of their employment. To the extent that such funds have not been refunded, Respondent shall be ordered to do so, with interest.

[18] It is noteworthy that the union-security clause in the parties' collective-bargaining agreement was negotiated several years before the *Paramax* decision issued.